

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rule I, the amendment of ARM)	AMENDMENT, AMENDMENT AND
2.21.3702, 2.21.3703, 2.21.3707,)	TRANSFER, AND REPEAL
2.21.3708, 2.21.3709, 2.21.3719,)	
2.21.3720, 2.21.3721, 2.21.3723,)	
2.21.3724, 2.21.3726, 2.21.3728,)	
2.21.3735, the amendment and transfer)	
of ARM 2.21.3705, and the repeal of)	
ARM 2.21.3704 and 2.21.3715)	
pertaining to recruitment and selection)	

TO: All Concerned Persons

1. On June 10, 2010, the Department of Administration published MAR Notice No. 2-21-438 regarding a public hearing to consider the proposed adoption, amendment, amendment and transfer, and repeal of the above-stated rules at page 1368 of the 2010 Montana Administrative Register, Issue Number 11. Prior to publication of the notice, the department failed to provide the sponsor notification required by 2-4-302, MCA, for New Rule I.

The department has notified the primary legislative sponsor of the proposed rule. A letter was mailed to the sponsor at the address on file with the Secretary of State regarding New Rule I, implementing the Military Selective Service Act, fulfilling the sponsor notification requirement. On July 29, 2010, the department published an amended notice of public hearing addressing the sponsor notification at page 1633 of the Montana Administrative Register, Issue Number 14.

2. On August 30, 2010, the department held a public hearing on the proposed adoption, amendment, amendment and transfer, and repeal.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The department received a comment asking why the terms "without consideration of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin or sexual orientation" were removed from ARM 2.21.3702.

RESPONSE #1: The department's objective is not to repeat information included in another policy. The department replaced the references to 49-3-201, MCA, which addressed nondiscrimination, with language stating "This policy, consistent with applicable state and federal laws, establishes minimum standards for equitable and consistent treatment of applicants and employees in recruitment and

selection." Prohibition of illegal discrimination is included in the Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention, ARM 2.21.4001, et seq.

COMMENT #2: The department received a comment requesting the term "agency managers" used throughout the policy be defined and examples provided.

RESPONSE #2: The department will not define "agency manager" since organizational structures in state government are so varied. Agencies should determine who their managers are in each recruitment and selection decision-making process.

COMMENT #3: The department received a comment suggesting changing the word "both" to "etc." in ARM 2.21.3703(1)(c).

RESPONSE #3: The department will not change this rule. ARM 2.21.3703(1) refers to minimum employment application requirements. Agency management may request additional materials.

COMMENT #4: The department received a comment recommending deleting ARM 2.21.3707(3), which allows agency managers to consider temporary employees in an internal recruitment. The commentor said there may be situations that temporary employees (on a case-by-case basis) are assigned to positions without a competitive process and could apply for permanent positions in a very limited pool.

RESPONSE #4: The department will not delete this rule section, but agrees that temporary employees considered for internal recruitment should have been hired through a competitive process. The department is adding this requirement to the rule. The department is amending ARM 2.21.3708(3) to require agency managers to post temporary jobs externally unless the agency director or designee decides to fill immediately. This language replaces the "agency decides on a case-by-case basis" language.

COMMENT #5: The department received a comment suggesting defining temporary assignments referred to in ARM 2.21.3707(4). The commentor also asked if directors have the authority to make temporary assignments permanent without a competitive process.

RESPONSE #5: The department addressed a long-standing practice of reassigning employees to temporary assignments with this rule. The department will not define temporary assignments. Agencies should have the flexibility to address agency needs when using reassignments and not be limited to a definition. The rule states temporary assignments may not exceed two years without a competitive process; therefore, directors could not make the temporary assignments permanent without a competitive process.

COMMENT #6: The department received a comment suggesting changing agency policy to agency standard procedures in ARM 2.21.3707(5) for consistency.

RESPONSE #6: The department agrees and is changing (5).

COMMENT #7: The department received a comment suggesting a generic reference to the Recruitment and Selection Manual in ARM 2.21.3719(2)(b) to cover development of future documents and methods.

RESPONSE #7: The department agrees and is changing the word "Manual" to "resources."

COMMENT #8: The department received a comment suggesting changing "annually review and update their selection procedures" to "review and update their selection procedures as vacancies occur" in ARM 2.21.3719(4). The commentor also suggested changing "procedures" to "procedures and materials" where used in the rule.

RESPONSE #8: The department agrees with the first suggestion and is changing ARM 2.21.3719(4). The term "selection procedure" is inclusive; therefore, it is unnecessary to add "and materials."

COMMENT #9: The department received a comment suggesting the sentence in ARM 2.21.3720(2) should be moved to ARM 2.21.3720(1) for clarity where needed.

RESPONSE #9: The department is clarifying ARM 2.21.3720(1), but left the sentence in (2) as is for emphasis.

COMMENT #10: The department received a request to add the words "job related" to the language "unique backgrounds and experiences of each applicant" in ARM 2.21.3721(2).

RESPONSE #10: The department will not change the rule as it is unnecessary and restrictive to add "job related" when referring to the applicant's background and experience.

COMMENT #11: The department received a request to clarify the new rule to explain what happens if a new employee does not provide the required information.

RESPONSE #11: The new rule follows a series of criteria that an agency must consider when it hires a male between the ages of 18 and 26. Section (4) addresses what happens if the information is not provided, but this section cannot be moved to (1) because the criteria in (2) and (3) must be considered before (4) is applied.

4. The department has adopted New Rule I (ARM 2.21.3711) as proposed.

5. The department has amended ARM 2.21.3702, 2.21.3703, 2.21.3708, 2.21.3709, 2.21.3721, 2.21.3723, 2.21.3724, 2.21.3726, 2.21.3728, and 2.21.3735 as proposed.

6. The department amended and transferred ARM 2.21.3705 to 2.21.3710 as proposed.

7. The department has amended ARM 2.21.3707, 2.21.3719, and 2.21.3720 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

2.21.3707 INTERNAL RECRUITMENT (1) through (2)(c) remain as proposed.

(3) Agency managers may consider temporary employees hired through a competitive process in an internal recruitment; however, student interns and short-term workers are not eligible to compete.

(4) remains as proposed.

(5) Agency managers shall post internal vacancy announcements according to agency ~~policy~~ standard procedures. The internal vacancy announcements should contain information similar to that required in ARM 2.21.3709, Vacancy Announcements.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.3719 DEVELOPMENT OF SELECTION PROCEDURES (1) through (2)(a) remain as proposed.

(b) For further guidance, agency managers may refer to the ~~r~~Recruitment and ~~s~~Selection ~~Manual~~ resources found at the State Human Resources Division web site: <http://hr.mt.gov/hrpp/guides.mcp> and also available from the State Human Resources Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.

(3) remains as proposed.

(4) Agency managers may use any selection procedure or combination of procedures that best assess the applicant against the job qualifications. Agencies shall ~~annually~~ review and update their selection procedures as vacancies occur.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.3720 ADMINISTRATION OF SELECTION PROCEDURES (1) During each step in the selection processes, agency managers shall ~~consistently~~ apply consistent selection procedures regarding:

(a) through (2) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

8. The department has repealed ARM 2.21.3704 and 2.21.3715 as proposed.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State September 13, 2010.